

## **EXHIBIT 1**

FCC000000117

FOR PUBLIC INSPECTION

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 00-K-212

ECHOSTAR COMMUNICATIONS CORPORATION,  
a Nevada corporation; ECHOSTAR SATELLITE  
CORPORATION, a Colorado corporation; and ECHOSTAR  
TECHNOLOGIES CORPORATION, a Texas corporation,

Plaintiffs,

v.

DIRECTV ENTERPRISES, Inc., a Delaware corporation;  
DIRECTV, Inc., a California corporation;  
DIRECTV MERCHANDISING, Inc., a Delaware corporation;  
DIRECTV OPERATIONS, Inc., a California corporation;  
HUGHES NETWORK SYSTEMS, a Delaware corporation; and  
THOMSON CONSUMER ELECTRONICS, Inc.,  
d/b/a RCA, a Delaware corporation,

Defendants.

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AND RELATED COUNTERCLAIMS

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**FIRST SET OF REQUESTS FOR ADMISSION  
OF DIRECTV ENTITIES AND HUGHES ELECTRONICS  
CORPORATION TO PLAINTIFFS**

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Pursuant to Federal Rule of Civil Procedure 36, Defendant and Counterclaimant

DIRECTV, Inc., Defendants DIRECTV Enterprises, Inc., DIRECTV Merchandising, Inc., and

DIRECTV Operations, Inc. (collectively "DIRECTV") and Defendant and Counterclaimant

Hughes Electronics Corporation ("Hughes") (incorrectly named in EchoStar's complaint as

FCC000000118

FOR PUBLIC INSPECTION

Hughes Network Systems) request that Plaintiffs Echostar *Communications* Corporation, Echostar Satellite Corporation, and Echostar Technologies Corporation (collectively "Echostar") admit in writing under oath the truth of each of the following requests for admission within thirty (30) days.

For purposes of these requests for admission, the following terms shall have the meaning set forth below:

A. "Echostar" means Echostar *Communications* Corporation, Echostar Satellite Corporation, Echostar Technologies Corporation, and all predecessors (merged, acquired, or otherwise), subsidiaries, parents, affiliates, and all directors, officers, agents, employees, attorneys and other persons acting on their behalf.

B. "DIRECTV" means DIRECTV *Enterprises*, Inc., DIRECTV, Inc., DIRECTV Merchandising, Inc., DIRECTV Operations, Inc., and all officers, directors, agents, employees, attorneys and other persons acting on their behalf.

C. "Hughes" means Hughes Electronics Corporation, Hughes Network Systems, and all predecessors, subsidiaries, parents, directors, officers, agents, employees, attorneys and other persons acting on their behalf.

D. The term "you" and "your" refer to Echostar, as defined above.

E. The terms "and" and "or" shall be construed conjunctively and disjunctively so as to acquire the broadest possible meaning.

F. The terms "satellite TV equipment" shall mean decoder and receiver boxes, satellite dishes, and any and all other mechanical hardware, used to obtain satellite TV programming.

G. The terms "any" and "all" also include "each" and "every."

H. The past tense includes the present tense where the clear meaning is not distorted by change of tense.

I. The term "cable" means companies, including but not limited to Time Warner, AT&T Broadband & Internet Services, Comcast Cable Communications, Inc., Adelphia Communication Corporation, Cox Communications, Inc., Cablevision Systems Corporation, Charter Communications, and Media One, that provide multiple channels of programming by transmitting those signals to subscribers through wires or lines connecting to the subscriber's television.

### REQUESTS FOR ADMISSION

1. Admit that Charlie Ergen stated the following on or about October 5, 1997: "You can't back down when the cable bully starts demanding your lunch money," as quoted in the attached Denver Post article. (Exhibit A)
2. Admit that EchoStar competes with cable for subscribers.
3. Admit that EchoStar competes with C-Band satellite for subscribers.
4. Admit that EchoStar competes with Multichannel Multipoint Distribution Service for subscribers.
5. Admit that EchoStar competes with Satellite Master Antenna TV for subscribers.
6. Admit that EchoStar competes with Home Satellite Dish for subscribers.
7. Admit that EchoStar had the opportunity to bid on the programming and distribution of sporting events with the National Football League.
8. Admit that EchoStar had the opportunity to bid on the programming and distribution of sporting events with the National Basketball Association.
9. Admit that EchoStar had the opportunity to bid on the programming and distribution of sporting events with the National Hockey League.
10. Admit that EchoStar had the opportunity to bid on the programming and distribution of sporting events with Major League Baseball.
11. Admit that EchoStar distributes its satellite TV equipment and service directly to consumers through its dishnetwork.com website.
12. Admit that EchoStar distributes its satellite TV equipment and service through the retailers identified on its dishnetwork.com website.

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13. Admit that EchoStar distributes its satellite TV equipment and service directly to consumers through its 1-800-333-DISH (3474) toll-free number.

14. Admit that, before the date that EchoStar signed an agreement to merge with (or acquire) Kelly Broadcasting Systems, EchoStar knew that DIRECTV and Kelly Broadcasting Systems had signed a contract granting DIRECTV the exclusive right to distribute certain ethnic programming supplied by Kelly Broadcasting Systems.

15. Admit that, before the date that EchoStar signed an agreement to merge with (or acquire) Kelly Broadcasting Systems, EchoStar knew that Kelly Broadcasting signed an agreement with DIRECTV under which Kelly Broadcasting had agreed to become a sales agent for DIRECTV.


16. Admit that, on or before the date that EchoStar signed an agreement to merge with (or acquire) Kelly Broadcasting Systems, EchoStar knew that the agreement between DIRECTV and Kelly Broadcasting could not be assigned or otherwise transferred by Kelly Broadcasting to any competitor of DIRECTV.

Dated: August 7, 2000

Respectfully submitted,

KIRKLAND & ELLIS

By

  
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Attorneys for DIRECTV Enterprises, Inc., DIRECTV, Inc., DIRECTV  
Merchandising, Inc., DIRECTV Operations, Inc. and Hughes Network Systems

**EXHIBIT 'A'**

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Citation  
10/5/97 DENVERPOST J01  
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1997 WL 13879313

Search Result

Rank 1 of 1

Database  
CONEWS

Denver Post  
Copyright 1997

Sunday, October 5, 1997

## Business

ERGEN ON THE EDGE EchoStar's hopes for future riding on nose of satellite  
Stephen Keating Denver Post Business Writer

Forty years ago this week, 4-year-old Charlie Ergen stood outside with his father near their home in Oak Ridge, Tenn. They watched Sputnik I, weighing no more than a grown man, tumble around the earth every 96 minutes.

The launch of the Soviet Union's satellite on Oct. 4, 1957, set off the Space Race.

Since then, humans have walked on the moon and flown in space shuttles. This past summer, a robot surveyed the surface of Mars. This month, the plutonium-powered NASA spacecraft Cassini will head toward Saturn.

Less dramatic, but as significant for life on Earth, Sputnik kicked off the era of commercial satellites that now beam TV, photo, data and telephone signals around the globe. Such communications technology has shrunk the world and launched billion-dollar businesses.

Charlie Ergen, now 44 and chairman of EchoStar Communications Corp., has reaped some of that whirlwind, recently landing on the Forbes list of the 400 richest Americans - on paper.

The question is whether the satellite business will be Ergen's undoing - for real.

This afternoon, Ergen and several hundred people associated with his Colorado-based company will watch from Cape Canaveral, Fla., as EchoStar's third communications satellite is scheduled to blast into orbit atop an Atlas rocket.

With all the risks he continues to take, Ergen might as well be strapped on top.

His company carries roughly \$1.6 billion in debt and loses \$300

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10/5/97 DENVERPOST J01

initially for every new subscriber who buys its pizza-sized satellite-TV dish.

"Our sleep test wouldn't be met with that kind of debt," said Stanley E. Hubbard, president of U.S. Satellite Broadcasting in St. Paul, Minn., an EchoStar competitor. "I don't think their debt structure allows them to have any kind of blip in their business plan."

The naysaying only fuels Ergen's bravado.

"People have dismissed EchoStar as not being financially viable for years," he said last week at his company's headquarters at Inverness Business Park. "They used to piss all over it. But now people have to tell a story of how they're going to compete with EchoStar."

Ergen and his 1,500 employees are fighting on many fronts to capture customers. They have to battle USSB and its partner, DirecTV, which is backed by General Motors. Then they confront Primestar, which is owned primarily by cable-TV companies.

Also, there is the cable industry itself, with 65 million subscribers and \$25 billion in annual revenues to defend.

"Old, analog, rotting miles of cable," said Ergen, as if tasting something unpleasant. "Once you've experienced digital satellite, you're not rushing out to get cable."

In case you miss the message, Ergen concluded, "I don't like cable."

And cable doesn't like him. The industry is gearing up to offer new digital channels that could make satellite service much less attractive.

Ergen remains undaunted.

"You can't back down when the cable bully starts demanding your lunch money," said Ergen, dressed in typically casual clothes and dancing around the balcony of his company's headquarters. "We've got the public's support, to the extent they're educated about it. We're fighting a battle for the hearts and minds of consumers."

EchoStar, though still a bit player in the pay-TV industry, has gained momentum. It shocked the industry in the summer of 1996, lowering the price of its satellite system from several hundred dollars to \$199, plus programming. Competitors had to follow suit. EchoStar had one of its best months in September, adding 105,000

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10/5/97 DENVERPOST J01

new subscribers for a total of 820,000. Though each new subscriber costs EchoStar \$300 in equipment and marketing, keeping a customer for five years represents revenues of \$1,000 to \$1,500.

EchoStar's stock, always volatile, has ticked up \$5 in the past two weeks to \$24. "They're winning the business," said Ted Henderson, an analyst with Janco Partners in Englewood.

But Henderson and others remain skeptical of Ergen's latest gamble to provide broadcast networks to home satellite viewers.

It helps to understand what he's up against.

Satellite companies like EchoStar, PrimeStar, DirecTV and USSB offer 100 to 200 channels of programming, many more than most cable-TV systems. That's how they've attracted 5 million subscribers in just three years.

But regulatory and technical hurdles have prevented satellite firms from carrying broadcast networks like ABC, CBS, NBC and Fox, or those channels' local news and sports programming.

That's a big problem. Seven out of 10 people who don't buy satellite TV systems cite the lack of broadcast networks as the reason, even though most can get those signals with basic cable or an antenna.

Ergen wants to change the game.

By launching EchoStar III today, and EchoStar IV next year, his company could have the capacity to offer broadcast channels in the top 20 markets, including Denver. Regulatory approvals and a second satellite dish would be required, while Ergen would have to keep the total price competitive with cable.

"If Charlie's right about the local channel issue and can pull it off, he'll tap pent-up demand," said Jimmy Schaeffler, an analyst with the Carmel Group in Carmel, Calif.

If he's wrong, Ergen must still attract several million more subscribers in the next few years to begin paying back \$1.6 billion in accumulated debt. Interest payments of \$46 million come due next year, with interest and principal ramping up to \$1.3 billion by 2004.

"I put the company in the nose of a Chinese rocket," said Ergen, referring to EchoStar's first satellite launch in 1995 by a Chinese firm with an iffy track record. "We bet our company that people want digital TV and we were right. I'm willing to bet the company

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10/5/97 DENVERPOST J01

again on local signals."

The two satellites, which together cost more than \$500 million. Foreign language programming, data services to the home and the leasing of satellite space to businesses are all on tap. The launches also provide insurance in case either of the two satellites already in orbit fail.

Ergen, a former financial analyst for Frito-Lay before forming EchoStar with his wife and a friend in 1980, has found some support on Wall Street.

EchoStar raised \$575 million in debt and preferred stock over the past four months, albeit at double-digit interest rates. This came after EchoStar's proposed satellite merger with Rupert Murdoch's News Corp. nosedived in May. The matter now is in federal court.

"We were given up for roadkill in June," said Ergen. "Today, our bonds are at an all-time high. Our stock is double what it was. Does that sound like the financial community thinks we're committing harikari?"

Whatever Ergen's future, he's going solo for now.

Prior to the Murdoch venture, EchoStar turned down investment proposals by Sprint Corp. and US West, according to several sources. Now, few suitors are lining up.

Ergen, who controls 72 percent of EchoStar's stock, claims the company can succeed on its own by staying hungry.

"You're not looking at a parking lot full of Porsches and Mercedes," he said. "We have major hurdles against us, financially and operationally. We're not telling Wall Street or anyone else that we're without risk as a company. We're not declaring victory."

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

Caption: PHOTOS: EchoStar chairman Charlie Ergen stands on a balcony at company headquarters under a model of EchoStar's third satellite, to be launched today from Cape Canaveral, Fla. The device is a key part of the direct-broadcast-satellite company's strategy for competing with its cable-television rivals. Stanley E. Hubbard, president of rival U.S. Satellite Broadcasting: "I don't think their (EchoStar's) debt structure allows them to have any kind of slip in their business plan." GRAPHIC: The Denver Post/Jonathan Moreno  
EchoStar's gamble

----- INDEX REFERENCES -----

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FOR PUBLIC INSPECTION

10/5/97 DENVERPOST J01

COMPANY (TICKER): Echostar Communications Corp. (DISH)

KEY WORDS: COMPANIES; SATELLITES; TECHNOLOGY; EXECUTIVES; CABLE TV;  
METRO

NEWS SUBJECT: High-Yield Issuers (HIY)

INDUSTRY: Communications Technology; Telecommunications, All (CMT TEL)

SIC: 1040, 6021, 6712

EDITION: ROCKIES

Word Count: 1172

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**PROOF OF SERVICE**

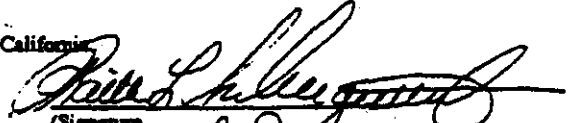
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 777 South Figueroa Street, 37<sup>th</sup> Floor, Los Angeles, California 90017.

On August 7, 2000, I served the foregoing document described as **FIRST SET OF REQUESTS FOR ADMISSION OF DIRECTV ENTITIES AND HUGHES ELECTRONICS CORPORATION TO PLAINTIFFS**

T. Wade Welch, Esq.	Mark A. Nadeau, Esq.	Greg Kerwin, Esq.
T. Wade Welch & Associates	Squires, Sanders & Dempsey, LLP	Gibson Dunn & Crutcher
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Fax: (713) 952-4994	Fax: (602) 253-8129	Fax: (303) 296-5310
Phone: (713) 952-4334	Phone: (602) 528-4000	Phone: (303) 298-5700

- ☐ By transmitting via facsimile, the document(s) listed above to the fax number set forth above on this date. I am aware that service is presumed invalid unless the transmission machine properly issues a transmission report stating the transmission is complete and without error.
- ☐ By placing the document(s) listed above in a sealed overnight courier envelope addressed as set forth above and routing the envelope for pick up with Federal Express for overnight delivery.
- ☒ By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.
- ☐ I personally served such envelope by hand to the person at the address set forth above.
- ☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed August 7, 2000, at Los Angeles, California

  
(Signature)  
FAITH L. SCHAEFER  
(Print Name)

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**EXHIBIT . 2**

FCC000000130

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 00-K-212

ECHOSTAR COMMUNICATIONS CORPORATION, et. al.,

Plaintiffs,

v.

DIRECTV Enterprises, Inc., et. al.,

Defendants.

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**PLAINTIFFS' RESPONSE TO DIRECTV'S AND HUGHES'  
FIRST SET OF REQUESTS FOR ADMISSIONS**

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In accordance with Rule 36 of the Federal Rules of Civil Procedure, Plaintiffs EchoStar Satellite Corporation ("ESC"), EchoStar Communications Corporation ("ECC"), and EchoStar Technology Corporation ("ETC") (collectively, "EchoStar") respond to Defendants DIRECTV, Inc., DIRECTV Enterprises, Inc., DIRECTV Merchandising, Inc., DIRECTV Operations, Inc., and Hughes<sup>1</sup> (collectively "DIRECTV") First Set of Admissions as follows:

**DEFINITIONS**

1. "Irrelevant" means not relevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence, and as such outside the scope of discovery pursuant to Rule 26 of the Federal Rules of Civil Procedure.

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<sup>1</sup> Plaintiffs named "Hughes Network Systems" in their Complaint. DIRECTV responded that there is no such legal entity and that "Hughes Electronics Corporation" is the proper party.

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2. "Produce" means make available for inspection and copying documents that are in the possession, custody, or control of Plaintiffs and that Plaintiffs could identify after a reasonable search, at a place, date, and time mutually agreeable to counsel for all parties. The word "produce" should not be construed as an admission that any particular document exists.

#### OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. EchoStar objects to DIRECTV's Requests for Admissions, including the definitions and instructions, to the extent they: (a) contain questions which exceed the scope and requirements of the applicable federal and local rules; (b) purport to require discovery not provided for by these rules, including, but not limited to discovery on subjects not at issue in this case; and (c) purport to require discovery of documents and information protected from discovery by the attorney-client privilege, the work product doctrine or any other applicable privilege.

2. EchoStar objects to DIRECTV's definitions to the extent that they are inconsistent with the ordinary and customary meaning of such words and phrases.

#### RESPONSES TO FIRST SET OF REQUESTS FOR ADMISSIONS

1. Admit that Charlie Ergen stated the following on or about October 5, 1997: "You can't back down when the cable bully starts demanding your lunch money," as quoted in the attached Denver Post article. (Exhibit A)

##### Answer:

EchoStar admits that the October 5, 1997 edition of the Denver Post does attribute the quoted sentence to Mr. Ergen. However, as that the event that is being reported occurred approximately three years prior to the date of these requests for admissions, EchoStar can neither admit nor deny.



2. Admit that EchoStar competes with cable for subscribers.

Answer:

EchoStar objects that this request for admission is vague and ambiguous, such that any response given by EchoStar may be misleading in light of the objectionable request. Subject to the aforementioned objection, EchoStar responds as follows.

EchoStar admits that when PrimeStar was owned by cable companies, EchoStar competed indirectly with cable (by virtue of its PrimeStar ownership) for satellite subscribers. Now that PrimeStar is owned by DIRECTV, EchoStar does not compete directly with cable for satellite subscribers.

3. Admit that EchoStar competes with C-Band satellite for subscribers.

Answer:

Denied.

4. Admit that EchoStar competes with Multichannel Multipoint Distribution Service for subscribers.

Answer:

Denied.

5. Admit that EchoStar competes with Satellite Master Antenna TV for subscribers.

Answer:

Denied.

6. Admit that EchoStar competes with Home Satellite Dish for subscribers.

Answer:

EchoStar objects to this request for admission in that the term "Home Satellite Dish" is undefined in DIRECTV's Requests for Admission and EchoStar cannot understand exactly what is being asked. However, EchoStar does admit that it competes with DIRECTV and HUGHES for the sale and distribution of "satellite TV equipment," as that term is defined in DIRECTV's Requests for Admissions.

7. Admit that EchoStar had the opportunity to bid on the programming and distribution of sporting events with the National Football League.

Answer:

Denied.

8. Admit that EchoStar had the opportunity to bid on the programming and distribution of sporting events with the National Basketball Association.

Answer:

Denied.

9. Admit that EchoStar had the opportunity to bid on the programming and distribution of sporting events with the National Hockey League.

Answer:

EchoStar admits that it submitted one bid in 1999 for the 1999-2000 season, but was told by the National Hockey League that DIRECTV had increased its payment to the National Hockey League in order to induce the National Hockey League to exclude EchoStar.

10. Admit that EchoStar had the opportunity to bid on the programming and distribution of sporting events with Major League Baseball.

Answer:

Denied.

11. Admit that EchoStar distributes its satellite TV equipment and service directly to consumers through its dishnetwork.com website.

Answer:

EchoStar admits that it distributes very small quantities of satellite TV equipment and service directly to consumers through its dishnetwork.com website.

12. Admit that EchoStar distributes its satellite TV equipment and service through the retailers identified on its dishnetwork.com website.

Answer:

EchoStar admits that it distributes its satellite TV equipment and service through the retailers identified on its dishnetwork.com website.

13. Admit that EchoStar distributes its satellite TV equipment and service directly to consumers through its 1-800-333-DISH (3474) toll-free number.

Answer:

EchoStar admits that it distributes very small quantities of its satellite TV equipment and service directly to consumers through its 1-800-333-DISH (3474) toll-free number.

14. Admit that, before the date that EchoStar signed an agreement to merge with (or acquire) Kelly Broadcasting Systems, EchoStar knew that DIRECTV and Kelly Broadcasting Systems had signed a contract granting DIRECTV the exclusive right to distribute certain ethnic programming supplied by Kelly Broadcasting Systems.

Answer:

Denied.

15. Admit that, before the date that EchoStar signed an agreement to merge with (or acquire) Kelly Broadcasting Systems, EchoStar knew that Kelly Broadcasting signed an agreement with DIRECTV under which Kelly Broadcasting had agreed to become a sales agent for DIRECTV.

Answer:

Denied.


16. Admit that, on or before the date that EchoStar signed an agreement to merge with (or acquire) Kelly Broadcasting Systems, EchoStar knew that the agreement between DIRECTV and Kelly Broadcasting could not be assigned or otherwise transferred by Kelly Broadcasting to any competitor of DIRECTV.

Answer:

Denied.

Submitted this 8<sup>th</sup> day of September, 2000.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 8<sup>th</sup> day of September, 2000, a true and correct copy of the foregoing has been forwarded via U.S. Mail to the following attorney(s) of record, in accordance with the Federal Rules of Civil Procedure:

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